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2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6 Diane Boware,

7 Plaintiff,

8 v.

9 Levi Strauss Distribution Center; et al.,

10 Defendants.

Case No. 2:23-cv-00579-GMN-VCF

11
12 **Order**

13 Before the Court is Defendant Levi Strauss & Co.’s motion to seal (ECF No. 24).

14 Because the Court¹ finds that Defendant has demonstrated compelling reasons, the Court grants
15 Defendant’s motion to seal.

16 **I. Legal Standard.**

17 There is a strong presumption of public access to judicial records. *Kamakana v. City &*
18 *County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). A party seeking to file documents
19 under seal bears the burden of overcoming that presumption. *Pintos v. Pac. Creditors Ass’n*, 605
20 F.3d 665, 678 (9th Cir. 2010). The standard applicable to a motion to seal turns on whether the
21 underlying materials are submitted in conjunction with a dispositive or a non-dispositive motion.
22 Whether a motion is “dispositive” turns on “whether the motion at issue is more than tangentially
23 related to the merits of a case.” *Center for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092,
24 1101 (9th Cir. 2016).

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26 ¹ The undersigned magistrate judge conducted the early neutral evaluation in this case, at which
27 early neutral evaluation the parties reached their settlement. (ECF No. 12). Because the instant
28 motion to seal seeks to seal portions of the parties’ settlement agreement in relation to
Defendants’ motion to enforce settlement—which motion the undersigned will address—the
undersigned also addresses the motion to seal.

1 Parties “who seek to maintain the secrecy of documents attached to dispositive motions
2 must meet the high threshold of showing that ‘compelling reasons’ support secrecy.” *Kamakana*,
3 447 F.3d at 1180. The Ninth Circuit has indicated that “‘compelling reasons’ sufficient to
4 outweigh the public’s interest in disclosure and justify sealing court records exist when such
5 ‘court files might have become a vehicle for improper purposes,’ such as the use of records to
6 gratify private spite, promote public scandal, circulate libelous statements, or release trade
7 secrets.” *Id.* at 1179 (quoting *Nixon v. Warner Commc’ns Inc.*, 435 U.S. 589, 598 (1978)). “The
8 mere fact that the production of records may lead to a litigant’s embarrassment, incrimination, or
9 exposure to further litigation will not, without more, compel the court to seal its records.” *Id.*

10 The burden to show compelling reasons is not met by conclusory assertions; rather, the
11 movant must “articulate compelling reasons supported by specific factual findings.” *Id.* at 1178.
12 For example, the Ninth Circuit has rejected efforts to seal documents under the “compelling
13 reasons” standard based on “conclusory statements about the contents of the documents—that they
14 are confidential and that, in general,” their disclosure would be harmful to the movant. *Id.* at
15 1182. Such “conclusory offerings do not rise to the level of ‘compelling reasons’ sufficiently
16 specific to bar the public access to the documents.” *Id.* In allowing the sealing of a document,
17 the Court must “articulate the basis for its ruling, without relying on hypothesis and conjecture.”
18 *See, e.g., Pintos*, 605 F.3d at 679 (quoting *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir.
19 1995)).

20 Any request to seal must also be “narrowly tailored” to remove from the public sphere
21 only material that warrants secrecy. *E.g., Ervine v. Warden*, 214 F. Supp. 3d 917, 919 (E.D. Cal.
22 2016) (citing *Press-Enterp. Co. v. Superior Court*, 464 U.S. 501, 513 (1984)). To the extent any
23 confidential information can be easily redacted while leaving meaningful information available to
24 the public, the Court must order that redacted versions be filed rather than sealing entire
25 documents. *See Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1137 (9th Cir. 2003); *see*
26 *also in re Roman Catholic Archbishop of Portland in Ore.*, 661 F.3d 417, 425 (9th Cir. 2011).

27 “[T]he mere fact that the parties’ settlement agreement may contain a confidentiality
28 provision, without more, does not constitute a compelling reason to seal the information.” *Helix*

1 *Environmental Planning Inc. v. Helix Environmental and Strategic Solutions*, No. 3:18-cv-02000-
2 AJB-AHG, 2021 WL 120829, at *1 (S.D. Cal. Jan. 13, 2021); *see also* *FTC v. AMG Servs.*, No.
3 2:12-cv-00536-GMN-VCF, 2020 U.S. Dist. Lexis 232231, at *5 (D. Nev. Dec. 10, 2020) (“the
4 confidentiality of the settlement agreement alone does not provide a compelling reason to seal”).
5 That is particularly true in the context of a motion to enforce settlement, as the local rules put the
6 parties on notice that the Court may order the disclosure of otherwise confidential information as
7 part of the resolution of that motion. *See* Local Rule 16-5. The logic behind this approach is
8 clear: although parties to a confidential settlement agreement may prefer to keep its terms secret,
9 “once they turn to the federal court to resolve their disputes ... the public administration of justice
10 demands transparency.” *Avocados Plus Inc. v. Freska Produce Int’l LLC*, No. 2:19-cv-06451-
11 RGK-JC, 2019 WL 12345580, at *2 (C.D. Cal. Oct. 8, 2019) (quoting *Polaris Innovations Ltd. v.*
12 *Kingston Tech. Co.*, No. SA CV 16-00300-CJC(RAOx), 2017 WL 2806897, at *7 (C.D. Cal.
13 Mar. 30, 2017)). At the same time, courts recognize the general benefits of keeping settlement
14 discussions and settlements confidential when feasible. *See, e.g., U.S. E.E.O.C. v. ABM Indus.*
15 *Inc.*, No. 1:07-cv-01428 LJO JLT, 2010 WL 582049, at *2 (E.D. Cal. Feb. 12, 2010)
16 (“Confidentiality of the mediation process encourages settlement” (citing *United States v. Glens*
17 *Falls Newspapers, Inc.*, 160 F.3d 853, 858 (2d Cir. 1998)). Moreover, courts are loath to reward
18 gamesmanship whereby a litigant seeking to challenge a confidentiality provision can defeat such
19 confidentiality simply by requiring the filing of a motion to enforce. *Cf. Wells Fargo Bank, N.A.*
20 *v. Saticoy Bay LLC Series 3948 Applecrest*, No. 2:17-cv-01360-APG-VCF 2020 WL 2311560, at
21 *2 (D. Nev. Apr. 23, 2020) (noting that “[i]f Saticoy had not acted in bad faith and signed the
22 settlement agreement, then the settlement amounts and negotiations would have remained
23 confidential”). In addition, courts must balance the parties’ need for secrecy against the public’s
24 interests in transparency, including its interest in “understanding the judicial process.” *Pintos*,
25 605 F.3d at 679 & n.6. Given all of these considerations, some courts have taken a middle
26 approach in the context of a motion to enforce a settlement whereby the terms of settlement
27 pertinent to analyzing the motion to enforce will not be kept secret, but the terms that are
28 irrelevant to the motion to enforce will be kept secret. *See United States ex rel. Lesnik v.*

1 *Eisenmann SE*, No. 16-cv-01120-LHK, 2021 WL 2092944, at *3 (N.D. Cal. May 11, 2021); *see*
2 *also Pizza v. Fin. Indus. Regul. Auth., Inc.*, No. 13-cv-0688 MMC (NC), 2015 WL 1383142, at *2
3 (N.D. Cal. Mar. 19, 2015).

4 **II. Discussion.**

5 The Court grants Defendant’s motion to seal. Defendant seeks to seal Exhibits 1, 2-A-1,
6 2-A-2, 2-A-4, 2-A-5, and 2-A-6 to its motion to enforce the parties’ settlement agreement.
7 Exhibit 1 is the hearing transcript where the parties put their settlement on the record after their
8 settlement conference. Exhibit 2-A-1 is the draft settlement agreement, attached to an email to
9 Plaintiff. Exhibit 2-A-4 is a letter to Plaintiff asking her to sign the settlement documents and
10 including the settlement amount. Exhibit 2-A-5 is Plaintiff’s letter to Defendant, rescinding her
11 agreement to the original settlement amount and proposing a new settlement amount. Exhibit 2-
12 A-6 is an email to Plaintiff discussing the letter, including Plaintiff’s rescission of the original
13 settlement amount.

14 Defendant invokes the compelling reasons standard, and the Court agrees that this
15 standard applies.² And using the middle approach—under which the terms of the settlement
16 pertinent to analyzing the motion to enforce will not be kept secret, but the terms that are
17 irrelevant to the motion to enforce will—the Court will grant Defendant’s motion to seal. As a
18 preliminary matter, it is somewhat unclear what provisions of the settlement agreement are at
19 issue in the instant dispute. Plaintiff has not filed a response to Defendant’s motion to enforce
20 and her letter reneging on the settlement agreement appears to indicate that Plaintiff’s main
21 concern is the amount of settlement. Thus, it would appear that the most relevant term of the
22 parties’ settlement agreement to the instant dispute is the amount of the settlement. However, the
23 Court is also cognizant that the amount of the settlement is often the most closely-held term of a
24 settlement agreement because of the benefit it can give other potential litigants against the party
25 paying the settlement amount. Additionally, the Court is loath to reward potential gamesmanship

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27 ² *See Harper v. Nevada Property 1, LLC*, 552 F.Supp.3d 1033, 1040 n.6 (D. Nev. 2021)
28 (compiling cases and acknowledging that “[a]lthough case law within the Ninth Circuit is not
uniform, there is ample authority as to the dispositive nature of a motion to enforce settlement.”).

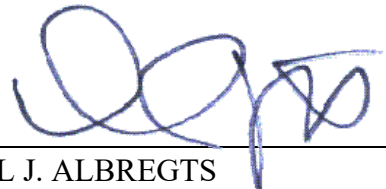
1 whereby Plaintiff reveals the settlement amount by challenging it and forcing Defendant to file a
2 motion to enforce. Defendant has also sought only to seek those documents which would reveal
3 the settlement terms.

4 Given the balance the Court must strike between keeping the settlement discussions
5 confidential and revealing the dispute between the parties, the Court grants Defendant's motion to
6 seal. While it appears that Plaintiff's main dispute with the settlement agreement is the amount, it
7 is unclear whether Plaintiff is disputing other portions. And, without this information, the Court
8 is not inclined to reveal the terms of the agreement on an assumption that the terms are in dispute.
9 Additionally, Defendant's motion outlines the nature of the parties' dispute such that the precise
10 terms of the agreement are not necessary for the public to understand the parties' disagreement
11 over the settlement.

12 However, currently, Defendant's motion is sealed in its entirety. (ECF No. 23). The
13 Court will keep this motion under seal. And the Court will require Defendant to file a public
14 version of its motion and the exhibits it does not seek to seal on the public docket.

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16 **IT IS THEREFORE ORDERED** that Defendant's motion to seal (ECF No 24) is
17 **granted.** Defendant must file a version of its motion to enforce settlement along with the exhibits
18 it does not seek to seal on the public docket on or before **December 18, 2023.**

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20 DATED: November 16, 2023

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23 DANIEL J. ALBREGTS
24 UNITED STATES MAGISTRATE JUDGE
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